

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Amanda Harouche	Team: Team # 1	CCRB Case #: 201408921	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/29/2014 7:50 AM	Location of Incident: Morris Avenue and East 172nd Street	Precinct: 44	18 Mo. SOL 2/29/2016	EO SOL 2/29/2016	
Date/Time CV Reported Fri, 08/29/2014 8:37 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 08/29/2014 8:37 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Smith	29038	942823	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michele Butera	21154	948723	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Smith	Force: PO Michael Smith used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On August 29, 2014 at approximately 7:50 a.m., PO Michael Smith and PO Michele Butera, of the 44th Precinct, responded to a radio run of a stolen cell phone and stopped § 87(2)(b) who fit the description of the perpetrator of the stolen cell phone as he was holding a walker and wearing blue jeans and a hooded sweatshirt. § 87(2)(b) was walking to work when she observed, PO Smith and PO Butera struggling on the ground with § 87(2)(b) trying to place him in handcuffs on Morris Avenue between East 171st Street and East 172nd Street in the Bronx. § 87(2)(b) observed PO Smith punch § 87(2)(b) in the face two to three times (**Allegation A**) and began taking photographs. PO Smith then told § 87(2)(b) that § 87(2)(b) had stolen a cell phone. § 87(2)(b) called the CCRB and filed the complaint as a complainant/witness. She was unaware of the identities of the officers or the civilian involved in the altercation she observed. Through investigation, the victim was identified as § 87(2)(b) § 87(2)(b) was taken to the hospital as an Emotionally Disturbed Person. § 87(2)(b) was not arrested or summonsed.

§ 87(2)(g)

Mediation, Notice of Claim, and Criminal Histories

This case was not eligible for mediation. As of April 8, 2015, a Notice of Claim inquiry is pending with the Comptroller's Office (encl. 16a). § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 1c).
- This is the first CCRB complaint involving § 87(2)(b) (encl. 1d):
- PO Smith has been a member of the service for 8 years and there are no substantiated CCRB allegations against him (encl. 1a-b).

Potential Issues

This complaint was filed by § 87(2)(b) a third party witness, who did not know the victim, § 87(2)(b). The victim of the allegation was unknown to the investigation for a long period of time due to the dearth of documentation regarding this incident. There was no police documentation prepared for this incident that included the victim's name except for the Domestic Incident Report (encl. 9a-b), which was learned about during the interview of PO Butera (encl. a-h). The Domestic Incident Report revealed the name of the victim as § 87(2)(b). A Lexis Nexis query was run for § 87(2)(b) and yielded no results. Contact attempts were made to § 87(2)(b) based on the information available in the DIR. However, § 87(2)(b) has not contacted the CCRB in regard (encl. 3m). Because the CCRB was unable to contact § 87(2)(b) the investigation had to proceed without a statement from § 87(2)(b).

Findings and Recommendations

Explanation of Subject Officer Identification

- PO Smith admitted to punching § 87(2)(b)

Investigation Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(b) was stopped by PO Smith and PO Butera because he fit the description of the person who had just stolen a cell phone that was given to them by the radio dispatcher. § 87(2)(g)

Allegation A – Force: PO Michael Smith used physical force against § 87(2)(b)

It is undisputed that PO Smith punched § 87(2)(b) in the face two to three times.

PO Smith stated that § 87(2)(b) opened his mouth as if he was going to bite PO Smith but his mouth never made contact with PO Smith. When § 87(2)(b) leaned in to bite PO Smith's hand, PO Smith punched § 87(2)(b) in the right side of his face two to three times in a row using his right hand. PO Smith stated that the punches were an instant reflex response to § 87(2)(b) trying to bite him. PO Smith did not know why he decided to hit the male in the face and he did not know why he chose to hit § 87(2)(b) two to three times. PO Smith also said "Stop biting me" while punching § 87(2)(b). PO Smith considered the punches to be effective in getting § 87(2)(b) to stop trying to bite him (encl. 4a-e).

PO Butera stated that § 87(2)(b) tried to bite his and PO Smith's hands. § 87(2)(b) never got to bite PO Butera or PO Smith's hands because PO Butera pushed his head away using his forearm and an open hand. PO Butera did not see PO Smith punch the male in the face (encl. 5a-h).

Only the minimum amount of force necessary to overcome resistance can be used to effect an arrest or take a mentally ill or emotionally disturbed person into custody. *Patrol Guide Procedure 203-11* (encl. a-b).

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date